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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,638

04/08/2004

Thanthrimudalige D.J. Dunstan

3050-004

8823

33432 7590 11/13/2008

KILYK & BOWERSOX, P.L.L.C.

400 HOLIDAY COURT

SUITE 102

WARRENTON, VA 20186

EXAMINER

MAPLES, JOHN S

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

11/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,638	<b>Applicant(s)</b> DUNSTAN ET AL.	
	<b>Examiner</b> John S. Maples	<b>Art Unit</b> 1795	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5-21,23-56,58 and 59 is/are pending in the application.
- 4a) Of the above claim(s) 28-49 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 53-56 is/are allowed.
- 6) ☒ Claim(s) 1,5-21, 23-26, 50-52, 58 is/are rejected.
- 7) ☒ Claim(s) 27,52 and 59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/7/2004;2/7/2007</u> .                                       | 6) <input type="checkbox"/> Other: _____                          |

1. Applicant's election with traverse of the species requirement in the reply filed on 24 April 2008 is acknowledged. The traversal is on the grounds that because all of the claims were already examined, there is no undue burden on the examiner. This argument is found persuasive and the election of species requirement has been collapsed.

2. The nonpatent literature documents cited on the PTO-1449 filed 7 July 2004 were crossed out because copies of the same were not included therewith.

3. Claim 59 is objected to because "has" in line 2 should read --have-- to render the same grammatically correct.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 5-21, 23-26, 50-52, 58 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an electrochemical cell comprising an imidazolium or pyrazolium cation and a non-Lewis acid derived anion wherein the ratio of the cathode capacity to the anode capacity is 2 or greater, does not reasonably provide enablement for an electrochemical cell comprising an imidazolium or pyrazolium cation and a non-Lewis acid derived anion wherein the ratio of the cathode

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capacity to the anode capacity is not recited as being 2 or greater. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. (New Rejection)

Throughout the specification and examples therein and in applicant's amendment dated 9 January 2008, including the arguments presented therein, applicant states that for the claimed subject matter of claim 1 comprising an electrochemical cell to achieve a consistent charge and discharge cycling in the claimed temperature range, the cathode capacity to the anode capacity must be 2 or greater. Therefore claim 1 requires this claim recitation as outlined above to comply with the requirements under 35 USC 112, first paragraph.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kishi et al., though not prior art, teaches a battery having an electrolyte of interest.

7. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is 571-272-1287. The examiner can normally be reached on Monday-Friday, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John S. Maples/

John S. Maples  
Primary Examiner  
Art Unit 1795

JSM/11-10-2008